

Pro Se Litigation

Solo and Small Firm Conference

June 8, 2007

Dennis N. Smith

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“Pro Se Commission”

1. Missouri Supreme Court Joint Pro Se Commission to Review Pro Se Litigation (2002-2003)
2. Pro Se Litigation Interim Feasibility Committee (2003-2004)
3. Missouri Pro Se Implementation Commission (2005-present)

Missouri Supreme Court Joint Commission to Review *Pro Se* Litigation

Formed in October, 2002, to assess

1. The extent of *pro se* litigation in Missouri Family Courts.
2. The current difficulties encountered by *pro se* representation both by the litigants and the courts.
3. The measures that other states have adopted in response to the trend in self-representation.

Missouri Supreme Court Joint Commission to Review *Pro Se* Litigation


The Commission was also asked to identify and recommend statewide conceptual models for addressing *pro se* litigation in Missouri Family Courts.

Missouri Supreme Court Joint Commission to Review *Pro Se* Litigation

- Filed report and recommendations with Supreme Court in September, 2003.
- Report made nine recommendations.
- Report was approved by the Missouri Bar Board of Governors in October, 2003.

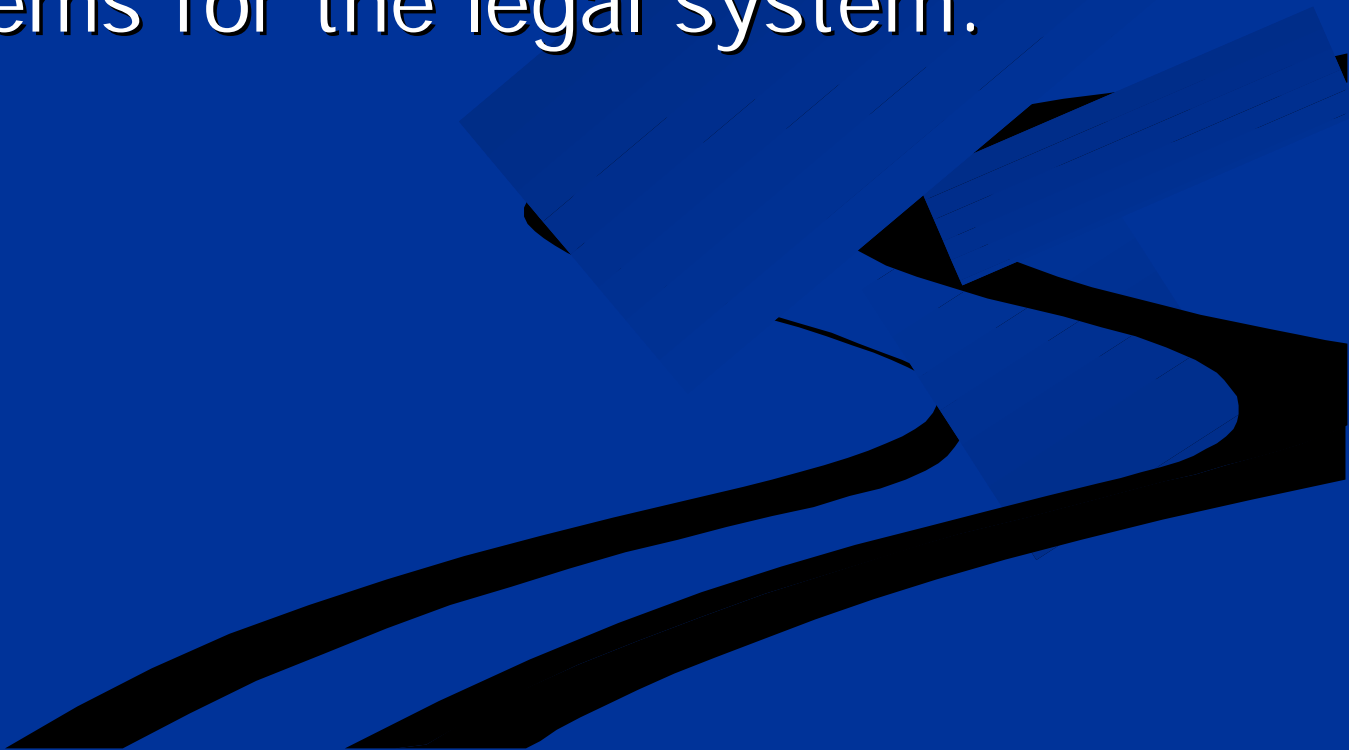
Facts Concerning *Pro Se* Litigation

All litigants would be better served by representation by a qualified attorney.



Facts Concerning *Pro Se* Litigation

Pro se litigants create significant problems for the legal system.

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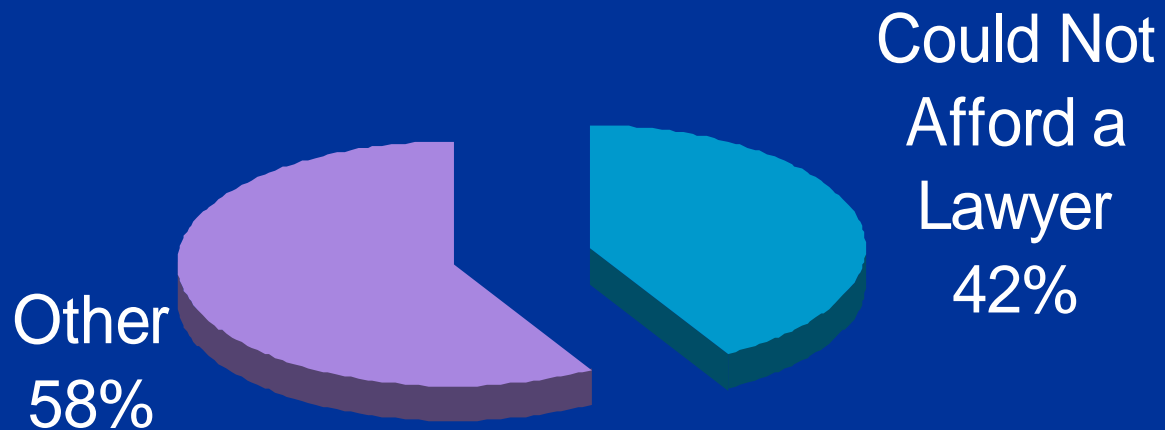
Recommendations

1. Mandatory Litigant Education
2. Guidelines for Court Staff
3. Judicial Education
4. Internet Clearinghouse
5. Pamphlet or brochure
6. Improve Lawyer Referral System
7. Encourage Pro Bono Efforts
8. Standardized Forms
9. Pro Se Implementation Commission

Did Not Recommend

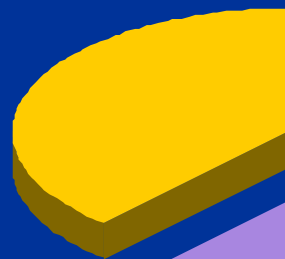
1. Family Court Facilitators
2. Establishment of Self-Help Centers
3. "How to" classes
4. Assistance by court staff in preparation of pleadings

Pro Se Commission Survey of Pro Se Litigants

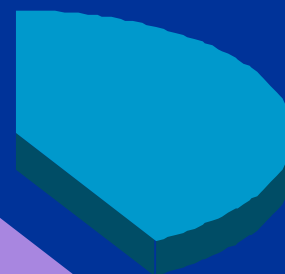


Pro Se Commission Survey of Pro Se Litigants

Didn't Think
They
Needed a
Lawyer
38%



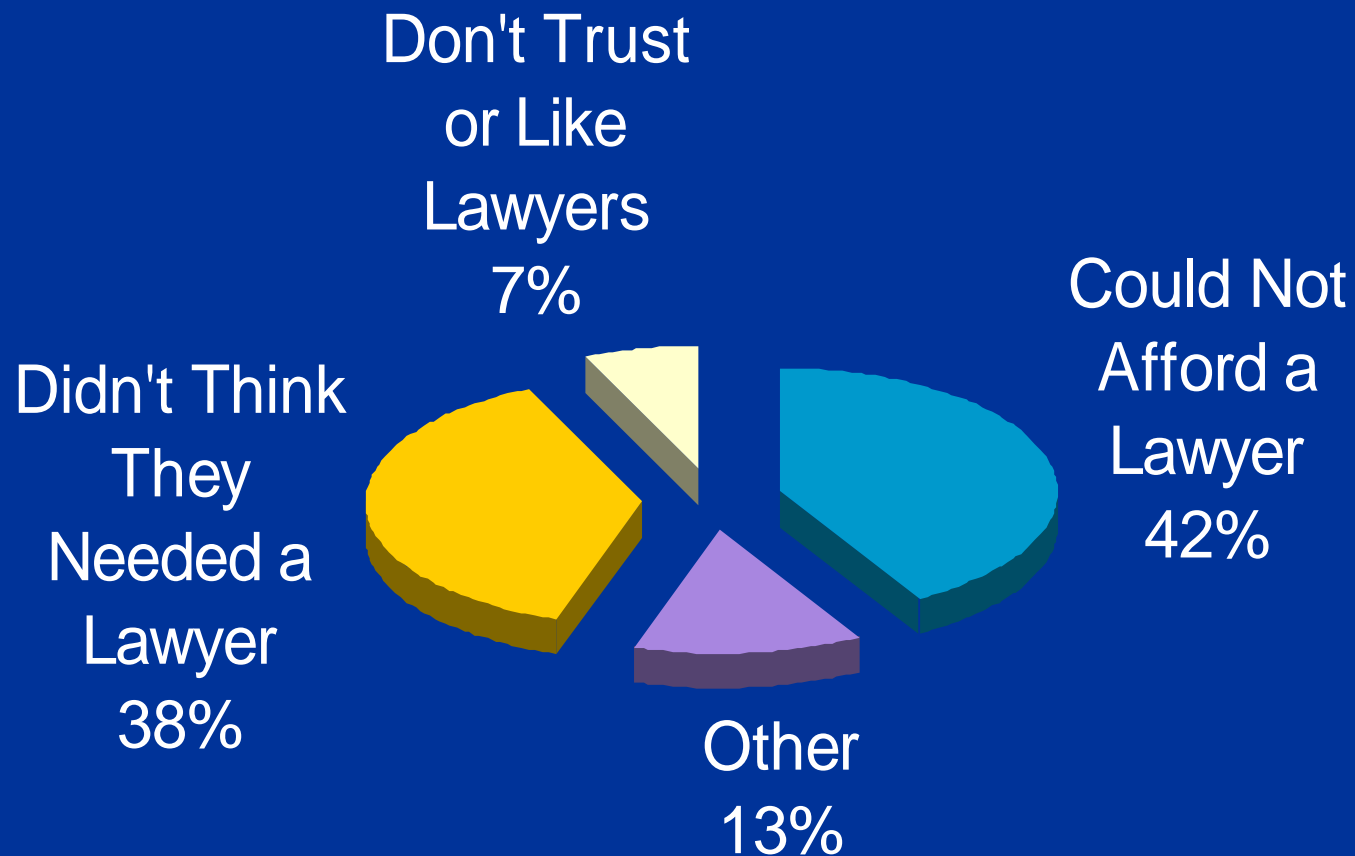
Could Not
Afford a
Lawyer
42%



Other
20%



Pro Se Commission Survey of Pro Se Litigants



People Who Cannot Afford a Lawyer

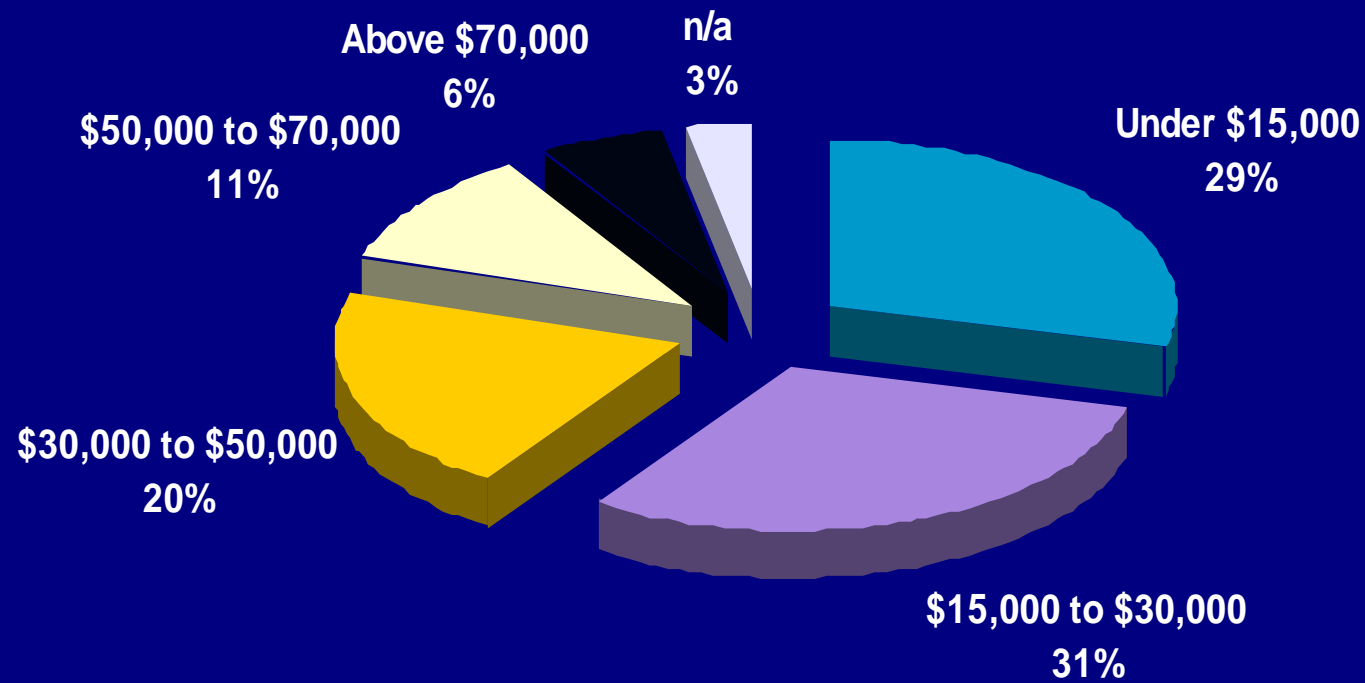
Not all litigants can afford to hire a qualified attorney.

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"The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship."

Chambers v. Baltimore & Ohio Railroad Company, 207 U.S. 142 (1907) cited in "Power Unchecked: Access to Justice at Risk" by Arthur H. Bryant.

Annual Household Income - Pro Se Commission Study

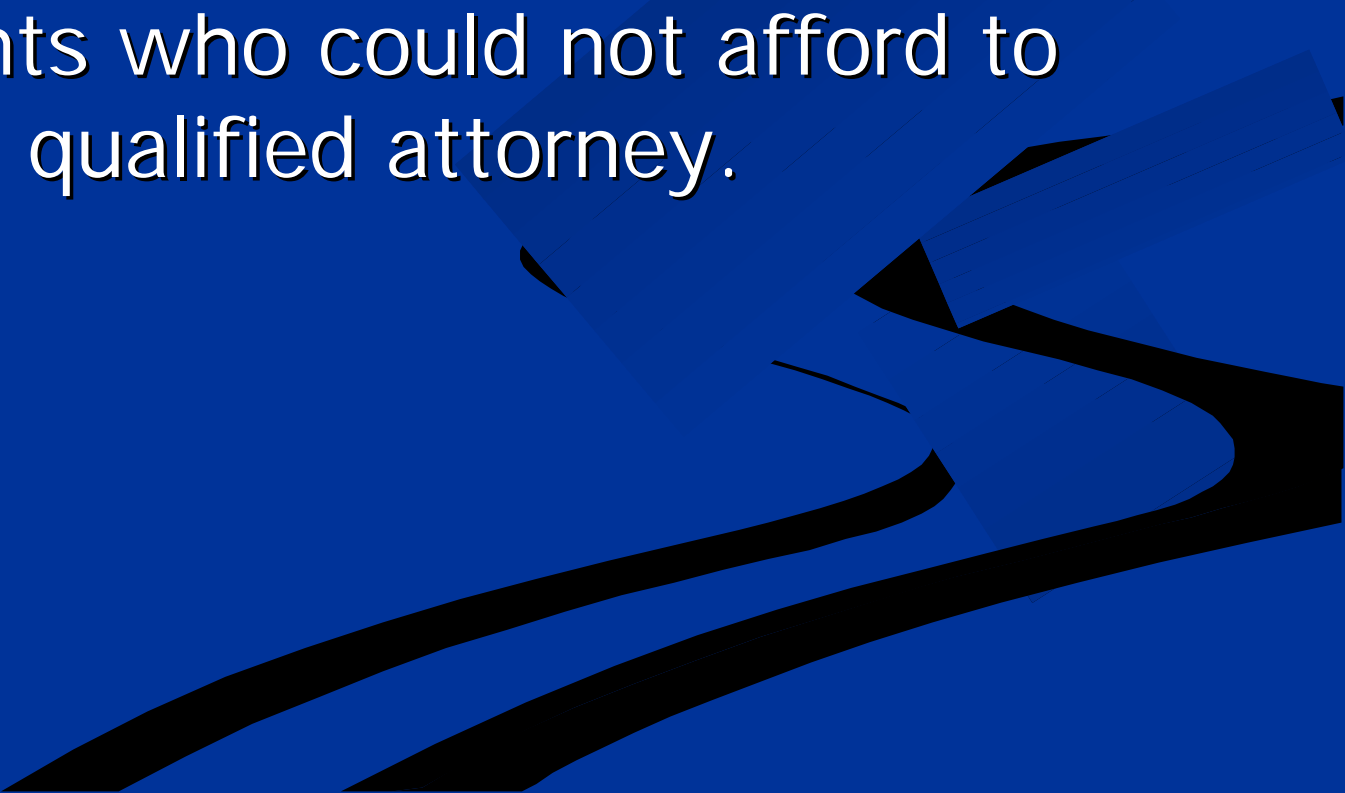


People Who Cannot Afford a Lawyer

- Legal services organizations cannot provide representation to all indigent or low-income litigants.
- 73% of qualified persons could not be helped by Legal Services Corporation.
- To “qualify” a single person household must have annual income less than \$12,763.00.

People Who Cannot Afford a Lawyer

Standardized forms assist *pro se* litigants who could not afford to hire a qualified attorney.

An abstract graphic in the bottom right corner of the slide. It consists of several overlapping, semi-transparent shapes in shades of blue and black, creating a sense of depth and movement. The shapes are curved and angular, resembling a stylized figure or a series of connected lines. The overall effect is modern and artistic, complementing the blue background of the slide.

People Who Cannot Afford a Lawyer

It is better that people retain a lawyer for some part of their case than to attempt to proceed without any input from a lawyer.
(Unbundled Legal Services)

People Who Cannot Afford a Lawyer

Lawyer referral services should be improved so that litigants can more easily locate lawyers who will provide some service at reasonable or reduced fees.
(Recommendation 6)

People Who CAN Afford a Lawyer

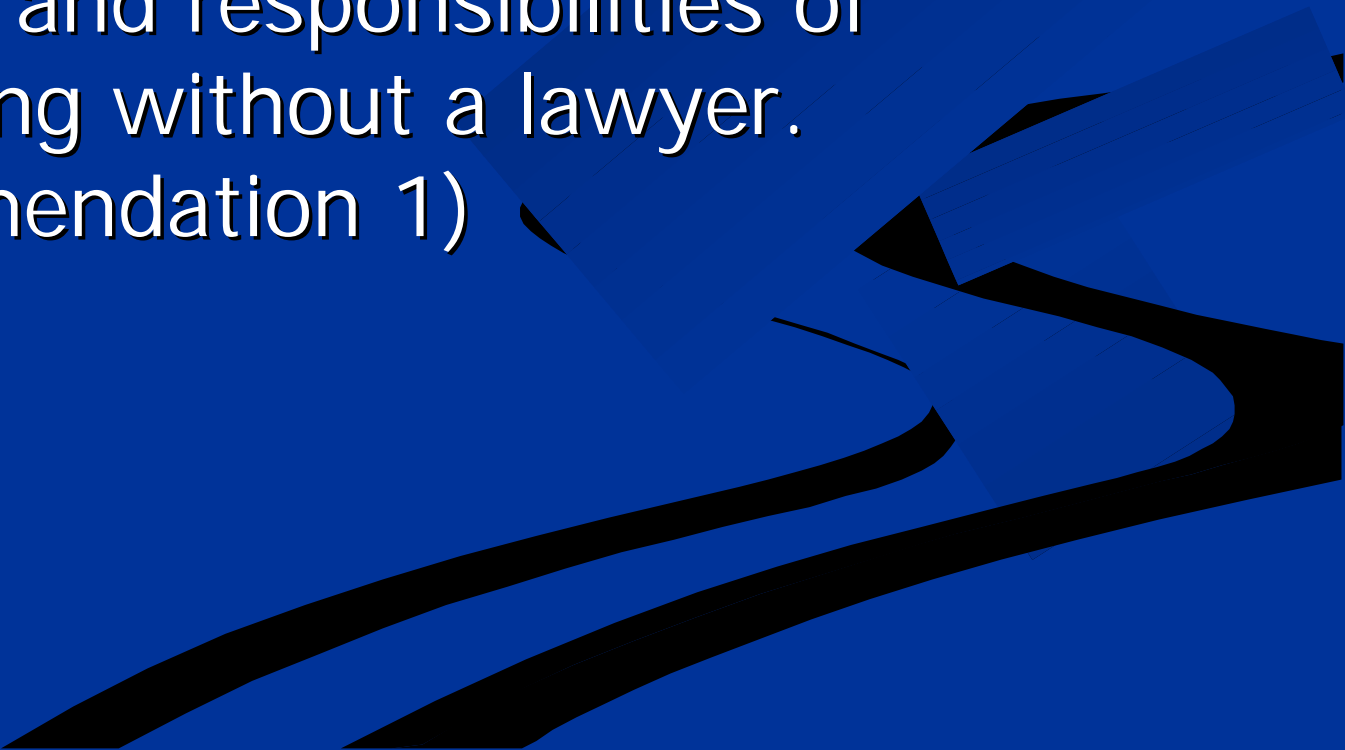


People Who Think They Don't Need a Lawyer

- “We’ve agreed on everything and we thought a lawyer would try to get us to fight.”
- “We don’t have any property or children so we thought this would be real simple.”

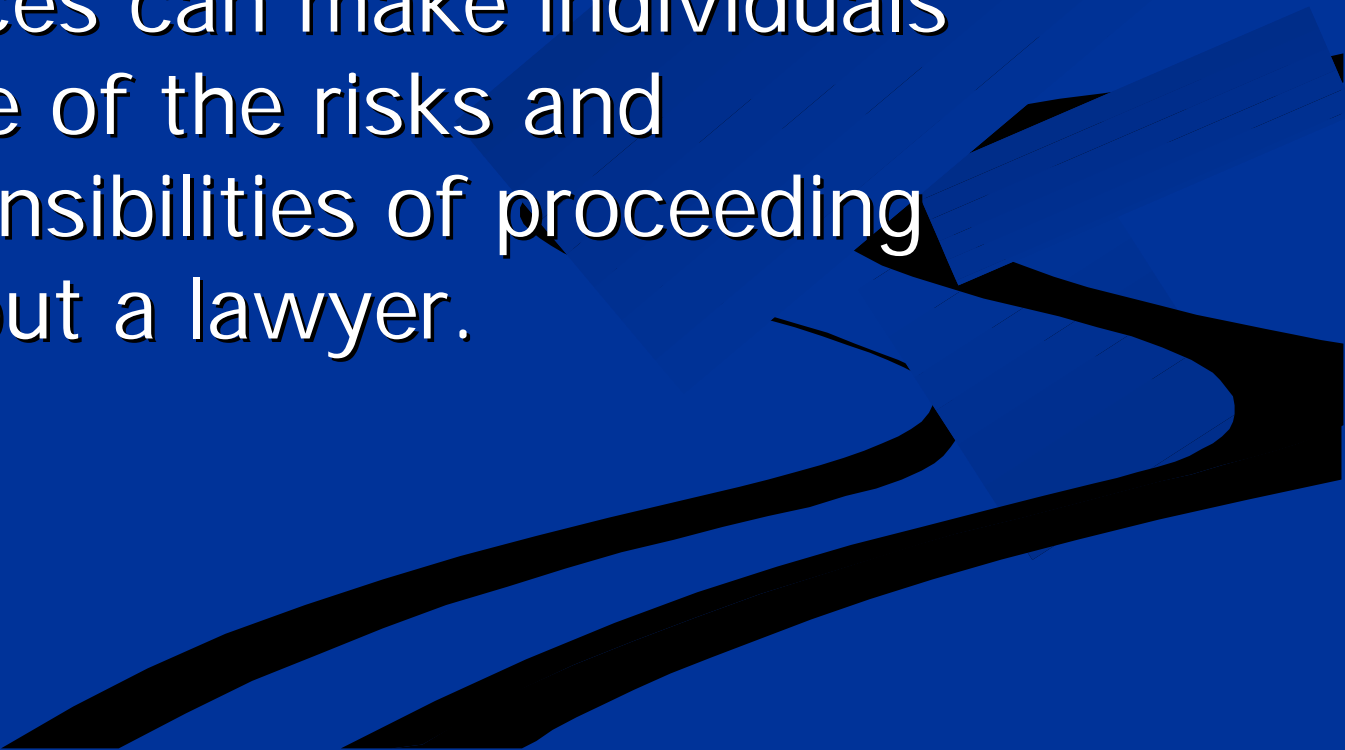
People Who Think They Don't Need a Lawyer

Mandatory litigant education points out the risks and responsibilities of proceeding without a lawyer.
(Recommendation 1)

An abstract graphic in the bottom right corner of the slide. It consists of several thick, black, curved lines that sweep upwards and to the right, creating a sense of motion or a stylized figure. The lines are layered, with some appearing in front of others, giving it a three-dimensional feel. The background of the slide is a solid dark blue.


People Who Think They Don't Need a Lawyer

Lawyers providing unbundled legal services can make individuals aware of the risks and responsibilities of proceeding without a lawyer.

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People Who Think They Don't Need a Lawyer

Court approved standardized forms that describe the legal issues involved in a case educate litigants that lawyers provide a valuable service.

An abstract black graphic consisting of several thick, curved, parallel lines that sweep across the bottom right portion of the slide, creating a sense of motion or a stylized signature.

Standardized Forms

Judges and clerks can deal more effectively with pro se litigants if pro se litigants use standardized forms.

Standardized Forms

- ✓ Alaska
- ✓ Arizona
- ✓ California
- ✓ Colorado
- ✓ Connecticut
- ✓ Delaware
- ✓ Florida
- ✓ Hawaii
- ✓ Idaho
- ✓ Iowa

Standardized Forms


- ✓ Indiana
- ✓ Maine
- ✓ Maryland
- ✓ Minnesota
- ✓ Montana
- ✓ Nebraska
- ✓ Nevada
- ✓ New Mexico
- ✓ New York
- ✓ Oregon

Standardized Forms

- ✓ Texas
- ✓ Utah
- ✓ Vermont
- ✓ Washington
- ✓ Wisconsin
- ✓ West Virginia
- ✓ Wyoming

Standardized Forms

Standardized forms must accurately and correctly state the law.

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Standardized Forms

Elimination of court approved forms won't eliminate pro se litigants OR pro se forms.

People Who Think They Don't Need a Lawyer

- <http://www.divorcesource.com/promotions/online/moonline.shtml>
- <http://www.the-law-store.com/>
- <http://www.ilrq.com/forms/divorce-mc/us/mo>
- <http://www.edivorcepapers.com/missouri-divorce-forms-and-papers.html>
- <http://www.document-do-it-yourself-service.com/>
- <http://www.3stepdivorce.com/docs/missouri.shtml>
- <http://www.easy-divorce.com/>

People Who Think They Don't Need a Lawyer


- <http://www.divorcesupport.com/divorce/Missouri-Divorce-Products-and-Services-2616.html>
- <http://www.womansdivorce.com/missouri.html>
- http://legalforms-usa.com/shopsite_sc/store/html/MISSOURI-DIVORCE-FORMS.html
- <http://www.smartlegalforms.com/catalog.asp>
- <http://www.legalhelper.net/divorce.aspx>
- <http://www.1stoplegal.com/forms/divorce.htm?Google>
- <http://www.divorceformz.com/>
- <http://www.findlegalforms.com/xcart/customer/home.php?partner=google&alphabetical=yes>

People Who Think They Don't Need a Lawyer

- <http://pages.us.com/adsection.php?link=MD0yMDkwMDE1MjI9NDE1NzkmYmlkbWF0Y2g9cCZiaWRrZXI3b3JkPWRpdm9yY2UqZm9ybXMmcHJvdmtleXdvcnQ9ZGI2b3JjZSBmb3Jt&qclid=CKq8q-KrloCFSgHlwod9BHFrQ>
- <http://www.uslegalforms.com/divorce/missouri-divorce-forms.htm?puslf=gl+missouri+divorce+forms&qclid=CPnd9YmLrloCFQIzWAodmh7ruQ>
- <http://www.rapidlaw.net/index.html><http://www.rapidlaw.net/index.html>
- <http://www.completecase.com/index.html?referrer=google>
- http://www.lawguru.com/legalforms/Missouri_Divorce_Testimony_Worksheet_p26072.html
- <http://www.standardlegal.com/legal-forms-software/Missouri-Divorce.html>
- <http://www.ourdivorceagreement.com/states/MOindex.htm>


People Who Think They Don't Need a Lawyer

Forms that are purchased from private sources are often deficient and tend to over-simplify the court process.



People Who Think They Don't Need a Lawyer

Many people believe that non-lawyer form factories are an acceptable substitute for representation by a lawyer.



We The People

It seems many lawyers have confused the Bill of Rights with the right to bill.

Divorce.

Lawyer's fees:
\$3,500
vs
We The People:
\$399

It's your right to represent *yourself*,
so why pay expensive lawyer's fees
when you don't have to?

Incorporation.

Lawyer's fees:
\$2,000
vs
We The People:
\$349

Living Trust.

Lawyer's fees:
\$2,000
vs
We The People:
\$499

Uncontested legal matters such as
divorces, incorporations, wills, and
more can be resolved without a
lawyer and without unnecessary fees.



We The People

DOCUMENT PREPARATION SERVICES

2722 Brentwood Blvd.

314-963-0600

St. Louis County Response to Pro Se Litigation Crisis



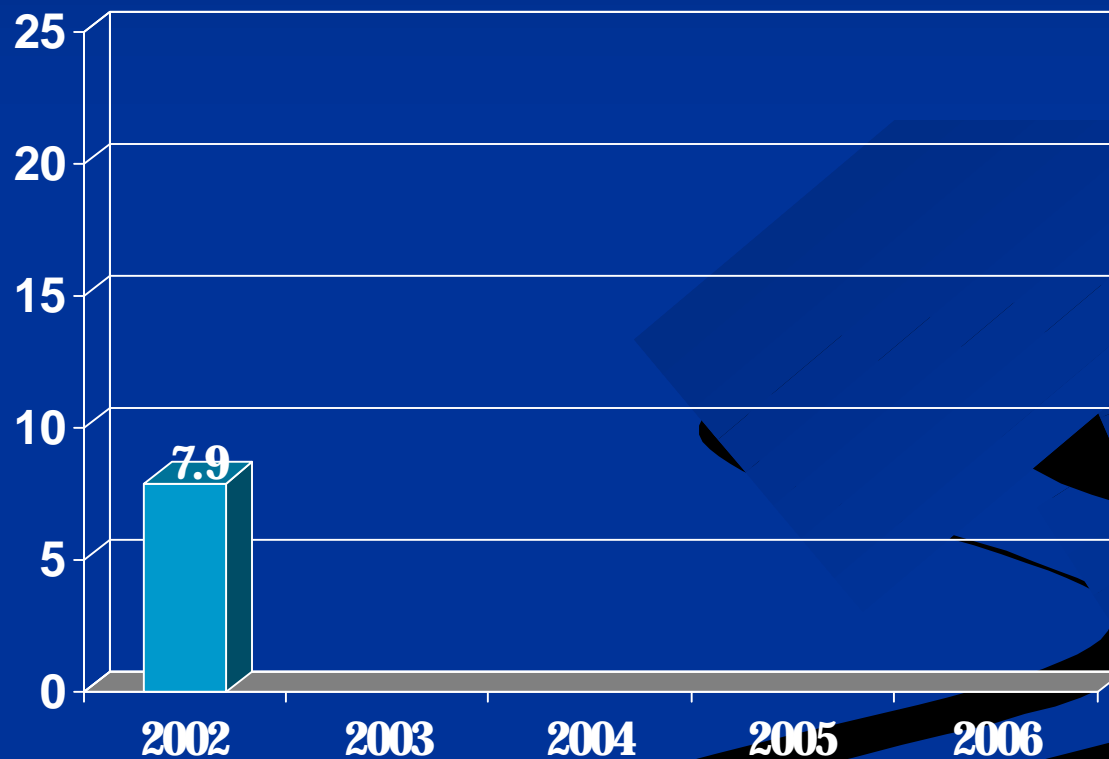
St. Louis County Response

- Legal Resource Center created in September, 2002.
- All dissolution cases filed pro se are assigned to Division FC7 unless the parties had a prior proceeding before another judge.

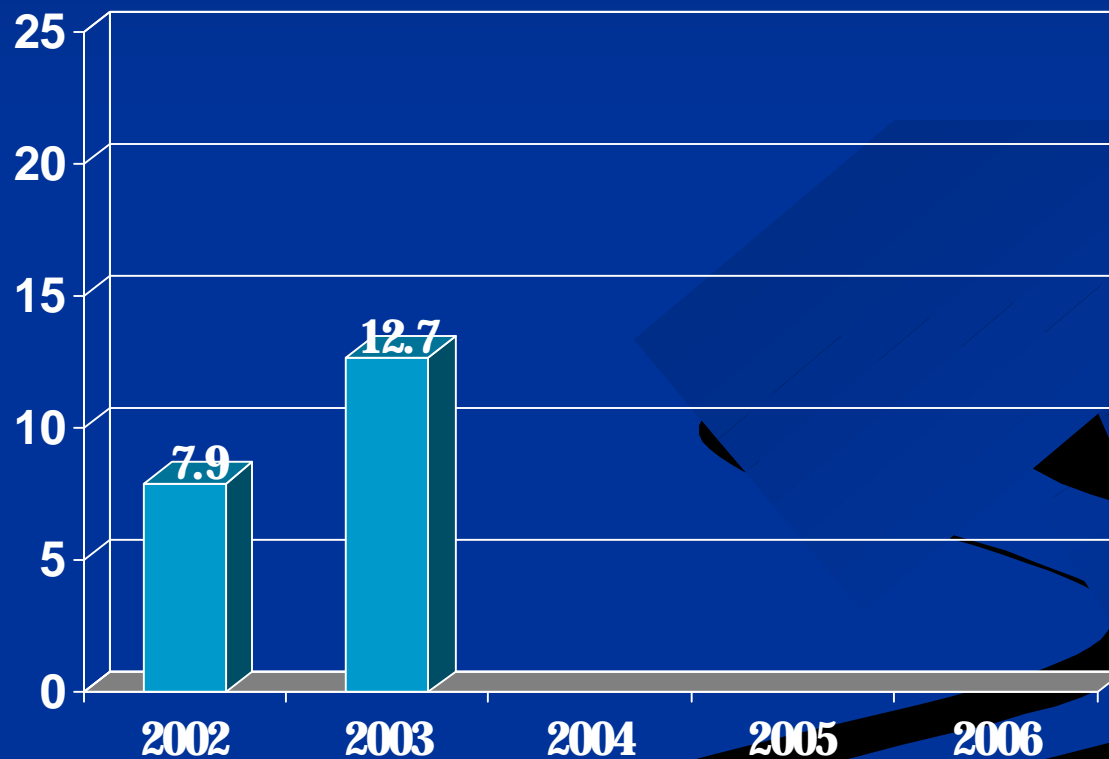
FC7 Dispositions

- 2514 Cases assigned to FC7
- 1906 Granted
- 321 Dismissed by court
- 20 Dismissed by parties
- 156 Entries by lawyers
- 11 Recusals
- 1 Contested cases
- 99 Pending

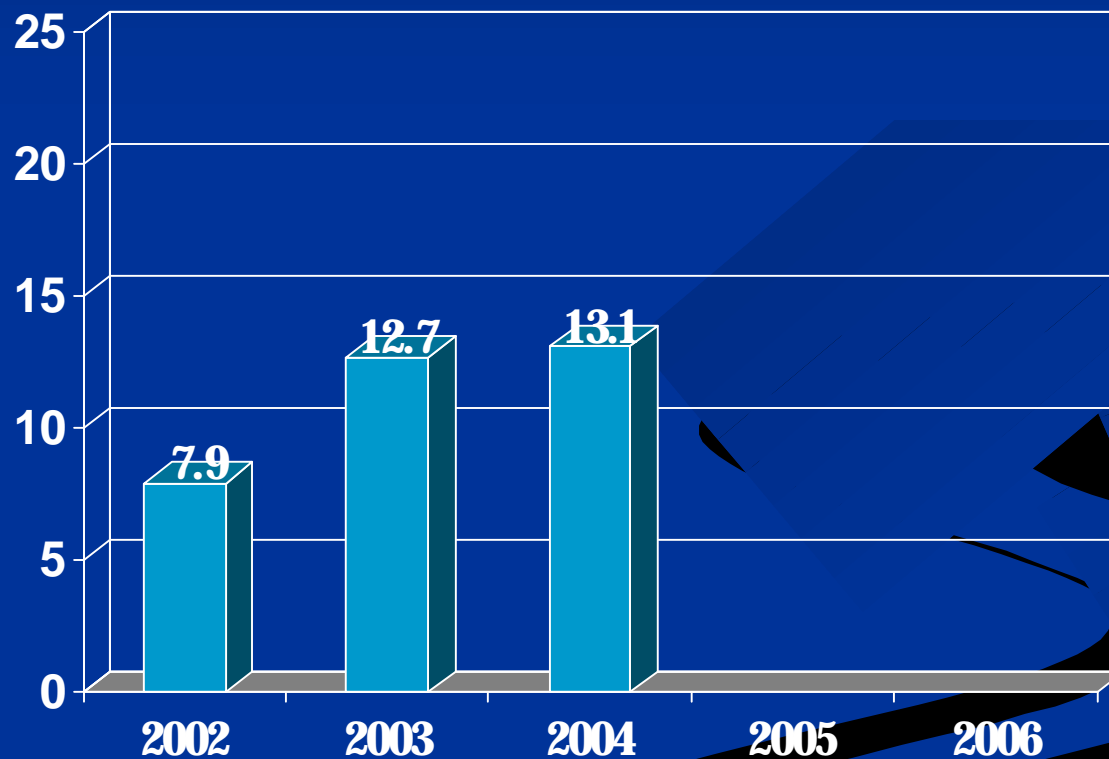
Dissolution Cases Assigned to Division FC7 in St. Louis County Filed by Non-Lawyers



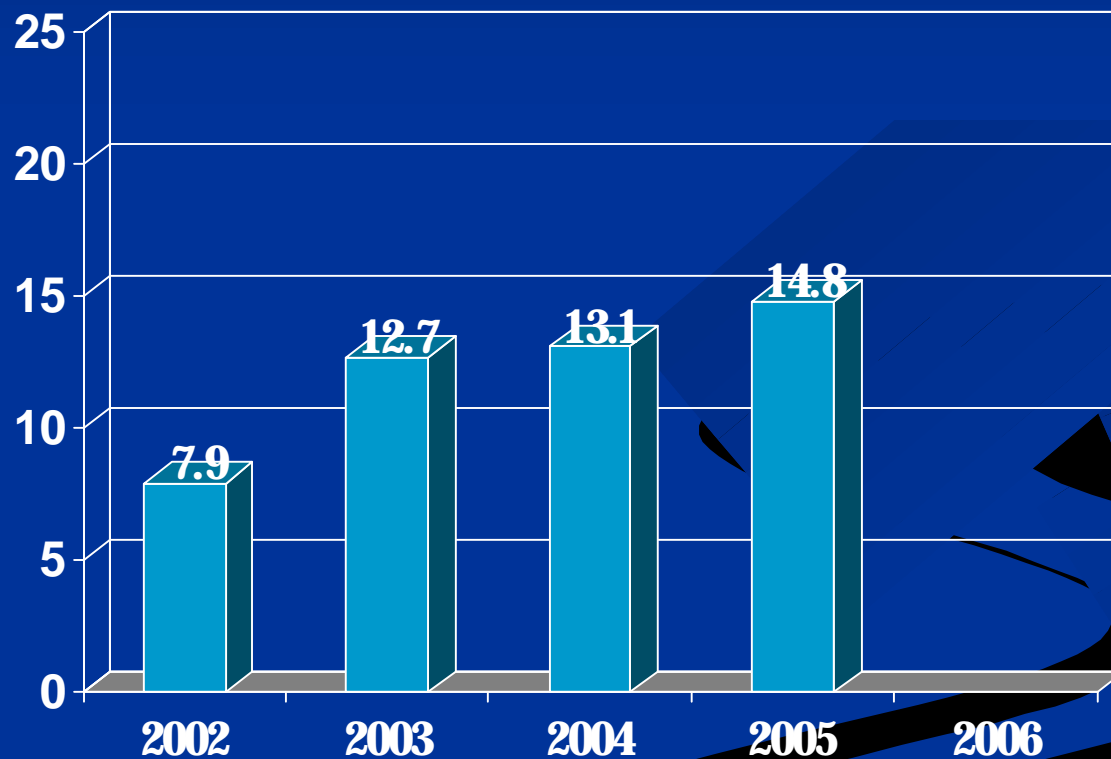
Dissolution Cases Assigned to Division FC7 in St. Louis County Filed by Non-Lawyers



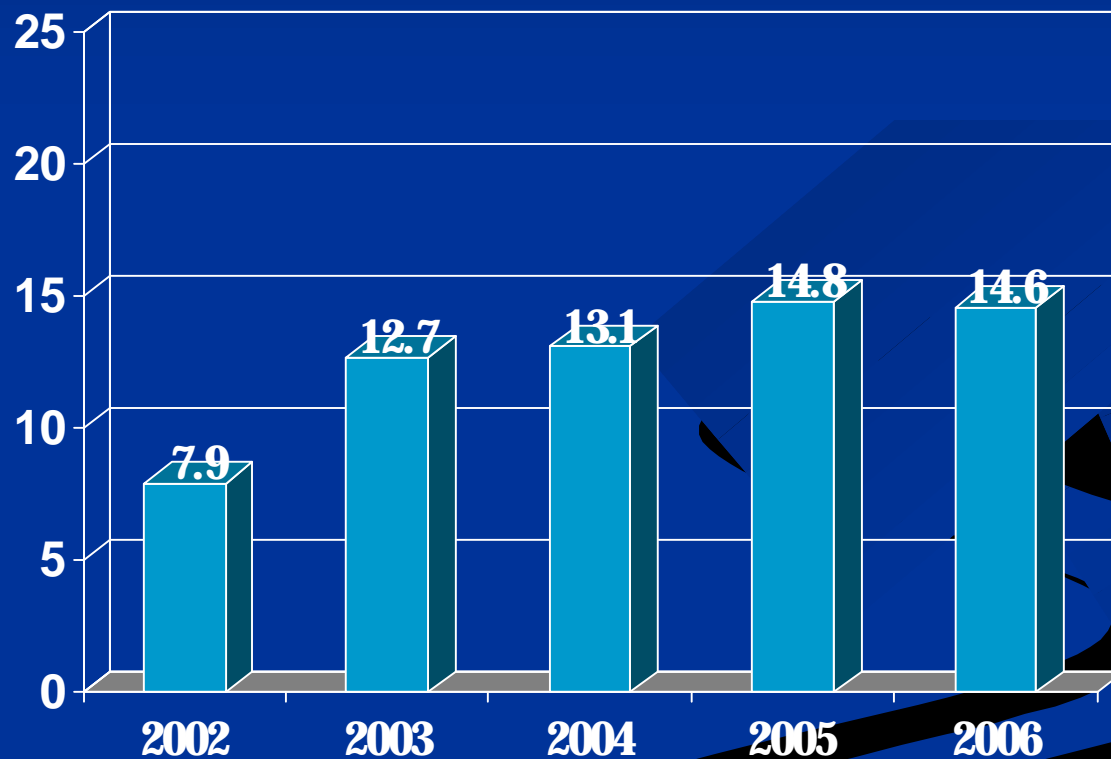
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Forms Distribution

From 1/2004 to 5/2006

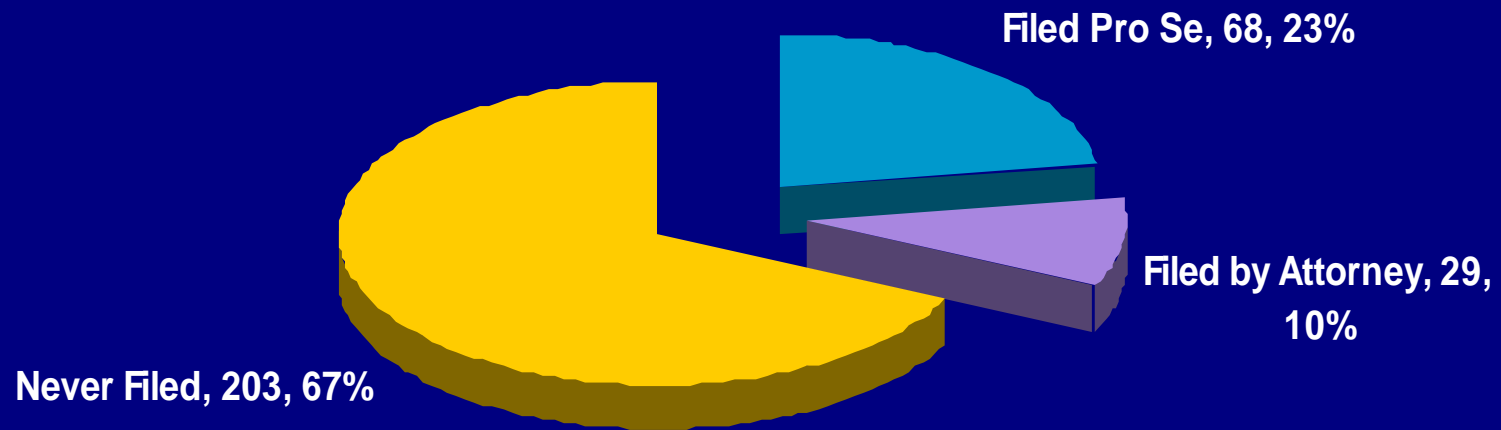
- 4300 forms packages were distributed in St. Louis County
- 1072 cases were filed using St. Louis County Forms

Forms Distribution

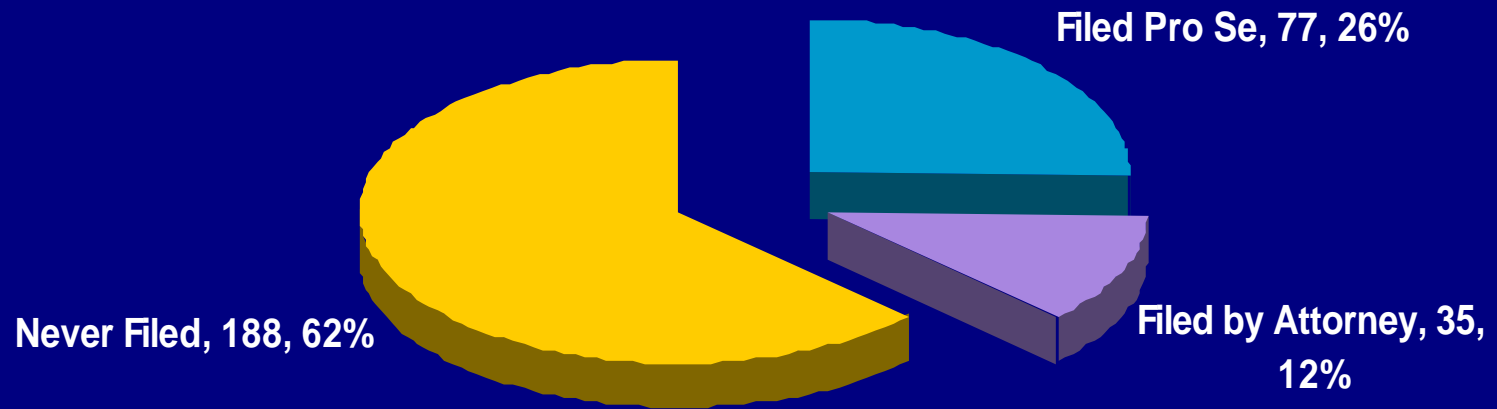
From 11/2006 to 3/2007

- 200 forms packages were distributed in Jackson County
- 80 cases were filed using court forms

Forms Acquired 8/1/2005 through 9/30/2005 (5/2006 Study)



Forms Acquired 8/1/2005 through 9/30/2005 (5/2007 Study)



Joint *Pro Se* Implementation Commission

Created in October, 2005, to
carry out the recommendations of
the Missouri Supreme Court Joint
Commission to review *Pro Se*
Litigation (Recommendation 9)

Proposed Missouri Supreme Court Rule 88.09

Every party not represented by counsel who participates in a proceeding for dissolution of marriage, legal separation, parentage or the modification of a judgment in any such proceeding:

(a) shall complete a litigant education program that includes an explanation of the risks and responsibilities of self representation. The awareness program authorized by this rule shall be approved by the Pro Se Commission, but each circuit may determine the manner and means by which the training shall be provided and the proof of compliance;

(b) may use the pleadings, forms, and proposed judgment approved by the Pro Se Commission. These forms shall be accepted by the courts of this state, unless disapproved or superseded by this court.

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